

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOSHUA LARK,

Petitioner, No. CIV S-05-0664 DFL JFM P

VS.

TOM CAREY, Warden,

**Respondent.** **ORDER**

Petitioner is a state prisoner proceeding pro se with an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner challenges a decision of a panel of the California Board of Prison Terms (Board) to deny him a parole date. This matter is before the court on respondent's motion to dismiss and on petitioner's motion for summary judgment.

Respondent contends that petitioner has no federally protected liberty interest in parole under California law. To support that contention, respondent relies on an order of the district court in Sass v. California Board of Prison Terms, 376 F.Supp.2d 975 (E.D.Cal. 2005). The Sass case is set for oral argument in the United States Court of Appeals for the Ninth Circuit on March 16, 2006. Good cause appearing, respondent's motion will be denied without prejudice to its renewal, as appropriate, not later than thirty days after any decision by the court of appeals in Sass.

1                   On July 28, 2005, petitioner filed a motion styled as a motion for summary  
2 judgment. The motion is premature and will therefore be denied without prejudice.

3                   In accordance with the above, IT IS HEREBY ORDERED that:

4                   1. Respondent's June 22, 2005 motion to dismiss is denied without prejudice; and  
5                   2. Petitioner's July 28, 2005 motion for summary judgment is denied without  
6 prejudice.

7                   DATED: March 2, 2006.

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9                   UNITED STATES MAGISTRATE JUDGE  
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